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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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03/11/2004

Brian J. Brozell

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27081

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04/21/2008

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

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MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/799,115	<b>Applicant(s)</b> BROZELL, BRIAN J.	
	<b>Examiner</b> JAMES N. SMALLEY	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-8 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5-8 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Allowable Subject Matter*

1. The indicated allowability of claims 1, 5-8 and 15 is withdrawn in view of the newly discovered reference(s) to Shah et al. US 4,375,858 and Akers US 5,449,078. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 5-8 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1, from which all remaining claims depend, limits the thread as being "continuous".

Examiner notes there is no support in the Specification for this limitation. In other words, the Specification fails to explicitly state that the threads are continuous. Examiner notes this ground of rejection in the previous Action was proper because Applicant amended the claims on October 22, 2007 to state the threads were continuous in the reply to the fourth Action of June 22, 2007.

Examiner notes the Figures of the instant invention do not provide sufficient support for this limitation, either. First, Examiner notes that the Specification discloses the embodiment of figure 14 is a quarter-turn view from that of figure 12. In figure 12, the thread (34) appears to not have any breaks in it; however, the thread in figure 14 appears to have a plateau in the middle of it (just above locking lug 32) and is also labeled as (34). Furthermore, Examiner notes figure 13 shows what is assumed to be the thread of figure 14 in the position of 9-o'clock and 3-o'clock. It appears the middle of the shaved portion of the thread is at the same level as the container neck finish and would thus constitute a break in the thread. However, since both threads in figures 12 and 14 are labeled (34), and, because there is no

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support in the specification for any of the threads to be continuous, the limitation lacks enablement by the Disclosure as originally filed.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 5-8 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, from which the remaining claims depend, it is not clear how the threads are "continuous". Examiner notes figure 13 shows what is assumed to be the thread of figure 14 in the position of 9-o'clock and 3-o'clock. It appears the middle of the shaved portion of the thread is at the same level as the container neck finish and would thus constitute a break in the thread. However, since both threads in figures 12 and 14 are labeled (34), and, because there is no support in the specification for any of the threads to be continuous.

Regarding claim 5, from which claims 6-7 depend, limit "wherein said angular wall is reverse angled from said base wall and terminates in an open end" (emphasis added). Examiner notes the emphasized term "reverse angled" is indefinite because it is not clear what is reversed about the angle. Noting instant figures 1 and 7, the base wall (56) is horizontal; the annular wall (58) extends generally perpendicularly from the base wall bottom surface, and appears to extend towards skirt (60), and includes a cam surface (84). It is not clear how this is "reverse angled" from the base wall. Examiner suggests amending the claim to define the annular wall extends generally perpendicularly and downwardly from the base wall, in order to overcome the rejection.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 5-7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. US 4,375,858 in view of Swartzbaugh et al. US 4,399,920.

Shah '858, in the embodiment of figures 7-8, teaches a child-resistant package including a container (19) having a finish (18) with an open mouth, at least one continuous external thread (20) adjacent to said open mouth, and at least one external radial projection (14, 15, 20) spaced from said at least one external thread on a side of said at least one external thread spaced from said open mouth, and a closure having a base wall (23), a skirt (24) with at least one continuous internal thread (unlabeled; **clearly shown in figure 8**) adjacent to said base wall for engagement with said at least one external thread on said closure onto said finish, at least one internal locking lug (11) spaced from said base wall and spaced from said at least one internal thread, and an annular wall (10) extending from said base wall at a position spaced radially inwardly from said skirt for resilient internal engagement with said open mouth of said container, said at least one internal locking lug being engageable with said at least one radial projection when said closure is fully threaded onto said finish of said container and resiliency of said annular wall holding said at least one internal locking lug in engagement with said at least one external radial projection to provide child resistance for said package, wherein said at least one external radial projection on said finish is located on a side of said at least one external thread opposite of said open mouth, and has a tangential leg portion (between (15 and 20) and an axial leg portion (15) at a counterclockwise end of said tangential leg portion (**When viewed from above, the axial leg 15 is to the right of 20, and is thus counterclockwise from 20.**), said tangential leg portion axially trapping said at least one internal locking lug (11) on said skirt against a spring force of said annular wall to provide said child resistance for said package.

Shah '858, as applied above, teaches all the limitations substantially as claimed but fails to teach said closure including at least one internal stop lug on said skirt adjacent to but spaced from said at least

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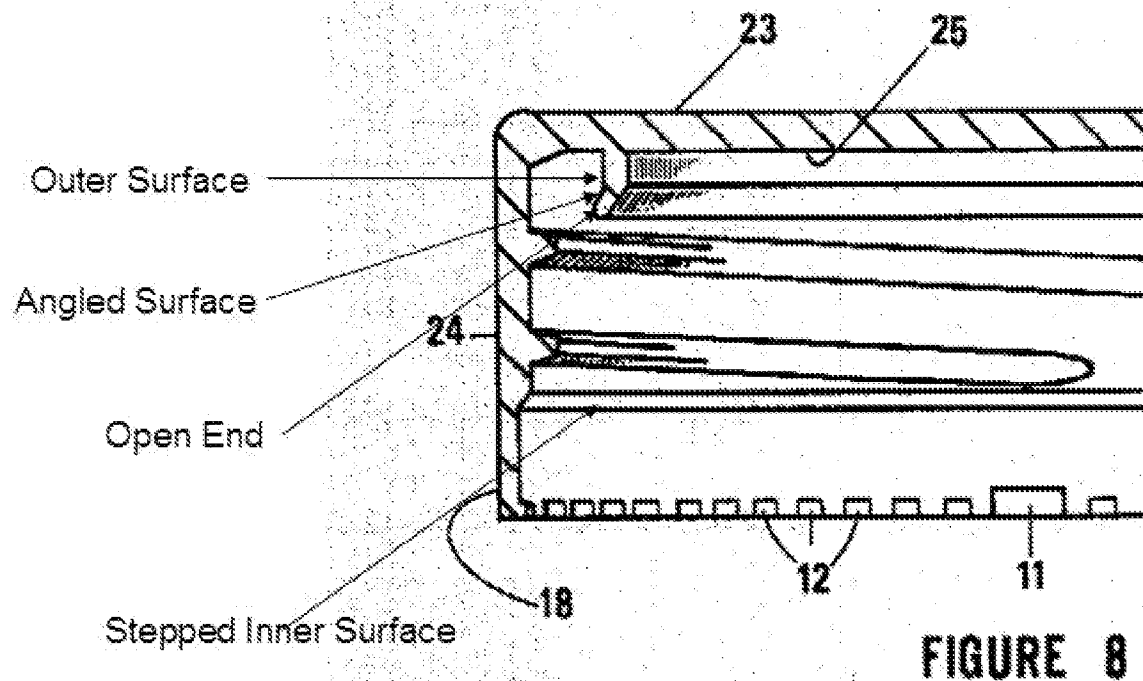
one internal locking lug on said skirt for engagement with said at least one external radial projection on said finish to prevent over-tightening of said closure on said finish of said container.

Swartzbaugh '920 teaches said closure including at least one internal stop lug (37) on said skirt adjacent to but spaced from said at least one internal locking lug (36) on said skirt for engagement with said at least one external radial projection (25) on said finish to prevent over-tightening of said closure on said finish of said container. A net material savings could be obtained if the closure lug is formed smaller than the stop lug.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Swartzbaugh '920, providing two separate lugs on the closure in place of one, and removing the stop portion (20) of Shah '858 in order to accommodate the function of preventing rotation of the closure in the removal direction, motivated by the benefit of reducing the amount of material used.

Shah '858, as modified, furthermore teaches the annular wall being reverse angled from said base wall and terminates in an open end (**Examiner notes in view of the rejection made above under 35 U.S.C. 112, 2<sup>nd</sup> paragraph regarding this claim and to the best degree the Examiner understands the claimed invention, the annular wall of Shah '858 is as "reverse angled" from the base wall as that of the instant invention.**), wherein said annular wall includes an outer surface and an angled surface, (**See diagram provided below.**) between said outer surface and said open end, wherein said open mouth is at least partially defined by an angled surface that cooperates with said angled surface of said annular wall of said closure to produce a spring force that tends to separate said closure from said container, wherein said closure skirt includes a first portion with an internal surface (**Read to be the inner surface of skirt 24.**) on which said at least one continuous internal thread is disposed, and a second portion having an internal surface stepped radially outwardly from said internal surface of said first portion and on which said at least one locking lug and said at least one stop lug are disposed (**Examiner notes Shah '858, figure 8, whereby the step is clearly shown in Figure 8, as noted in the diagram provided below.**).

Shah US 4,375,885, Figure 8



8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. US 4,375,858 in view of Swartzbaugh et al. US 4,399,920 as applied above to claim 1, and further in view of Akers US 5,449,078.

Shah '858 fails to teach wherein said axial portion of said at least one external radial projection on said container includes a cam surface and said at least one internal locking lug of said closure includes a cam surface, and wherein said cam surfaces cooperate to initially engage said at least one external radial projection and said at least one locking lug for securing said closure to said container in a child resistant manner.

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Akers '078 teaches a child safety cap including corresponding locking lugs including a closure locking lug (20) which has a sloping axially-oriented cam face, which engages a container locking lug (21) in order to engage and close the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure locking lug of Shah '858, providing a sloping axially-oriented face to match the slope of the container locking lug, as taught to be known by Akers '078, motivated by the benefit of providing a smoother engagement between these sliding parts.

### ***Response to Arguments***

9. Applicant's arguments, see Remarks, filed April 4, 2008, with respect to rejections made in the previous Final Action under 35 U.S.C. 112, 1<sup>st</sup> paragraph, with regard to the use of the phrase "at least one" have been fully considered and are persuasive. The rejection of the claims 1, 4-8 and 15 on these grounds has been withdrawn. Examiner notes support lies in the Specification for at least one thread and at least one lug on each of the container and closure, beginning on page 1, line 13.

### ***Conclusion***

10. This Action is **Non-Final**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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